per month as representing the monthly loss to the plaintiff. From the date of the accident up till today, he will consequently be awarded 42 months loss of earnings which at $350 per month yields $14,700.

For future loss of earnings, Mr. Varughese says that nothing should be awarded beyond the age of 55 and he relies on *Murtadza's* case.[3] I had the benefit of ingesting the comments of Chang Min Tat F.J. at page 218H and I am of the view that for the reasons there stated 55 years represents the end of the plaintiff's useful working life in this particular case. It has to be remembered that this plaintiff was found to have ischaemic heart disease when he was in hospital. At the date of the trial in May 1985 he was 54 years old. I would therefore give him a further 6 months for future loss of earnings *i.e.* $2,100. So I award interest at the rate of 4% on the special damages of $16,260 from the date of the service of the writ up to the date of judgment, and at the rate of 8% per annum on the general damages of $37,100 also from the date of the service of the writ.

As from the date of judgment up to realisation, interest will run at the rate of 8% on the global sum I have awarded up to realisation.

The plaintiff will also have his costs to be taxed and paid by the defendants.

Order accordingly.

Solicitors: *John Ang & Jega; Varughese & Co.*

KARPAL SINGH v. PUBLIC PROSECUTOR

[O.Cr.J. (Anuar J.) January 16, 1986]

[Ipoh – Perak Criminal Application No. 32 of 1985]

Criminal Law and Procedure – Illegal assembly – Member of – Warrant of arrest – Legality – Whether warrant or summons should be issued – Setting aside warrant – Police Act 1967, ss. 27(5)(a), (6) & (8) – Criminal Procedure Code (F.M.S. Cap. 6), s. 47.

The applicant was alleged to have committed an offence under section 27(5)(a) of the Police Act 1967 on August 30, 1984, by being a member of an illegal assembly in Kampar, Perak. The police applied for and obtained a warrant of arrest issued by the Kampar Magistrate's Court on October 1, 1985. The applicant was arrested and released on police bail. He applied for an order to set aside the warrant.

Held: (1) as this is a summons case, a summons not a warrant should be in the first instance;

(2) there is no indication that the applicant had absconded or that he would not obey a summons. Nor were there any reasons given by the learned Magistrate in issuing the warrant. In the event, the issue of a warrant was wrong in law and therefore illegal;

(3) it has to be borne in mind that it is the cardinal principle of law that in criminal cases the provisions of the law must be strictly followed. In the present case, ordinarily a Magistrate may only issue a summons. He cannot issue a warrant unless there is good reason for him to do so. In the absence of any good reason, the issue of a warrant would be wrong and illegal. The applicant was therefore illegally arrested;

(4) the warrant was accordingly set aside.

Cases referred to:

(1) *Perumal* v. *Public Prosecutor* [1970] 2 M.L.J. 265.
(2) *Saminathan* v. *Public Prosecutor* [1937] M.L.J. 39.
(3) *Saw Kim Hai* v. *R.* [1956] M.L.J. 21.

CRIMINAL APPLICATION.

Karpal Singh in person.

Madam Su Geok Yiam (Deputy Prosecutor) for the respondent.

Cur. Adv. Vult.

Anuar J.: The applicant is alleged to have committed an offence under section 27(5)(a) of the Police Act 1967 on August 30, 1984 by being a member of an illegal assembly at a Chinese Assembly Hall at Kopisan Baru Gopeng, Kampar, Perak. On October 1, 1985 the police applied for a Warrant of Arrest against the applicant which warrant was issued by the Kampar Magistrate's Court on the same day and the applicant was later arrested at Georgetown Police Station on October 25, 1985. The applicant was released on police bail subject to the condition that he presents himself at the Kampar Magistrate's Court on November 16, 1985.

The applicant first applied to the High Court at Penang to have the Warrant of Arrest set aside. However, the learned Judge declined to exercise his jurisdiction on the grounds that the proper forum to hear the application should be the High Court in Ipoh. In the event the applicant now applies to this Court to have the Warrant of Arrest set aside on the grounds that the said Warrant of Arrest had been issued without any legal authority.

Having heard the applicant and the learned Deputy Public Prosecutor, I allowed the application.

The learned Deputy Public Prosecutor submitted that the legality or illegality of the warrant should not be an issue before this Court as section 85 of the Subordinate Courts Act, 1948 confers jurisdiction upon the Magistrate's Court to hear the case. She referred to the cases of *Perumal* v. *Public Prosecutor*,[1] *Saminathan* v. *Public Prosecutor*[2] and *Saw Kim Hai* v. *R.*[3] as authorities.

With respect, to my mind, the issue in this application is not whether the Magistrate's Court has jurisdiction to try the offence where the accused had been illegally arrested. The issue is whether in the circumstances the warrant was issued legally or not. The authorities referred to by the learned Deputy Public Prosecutor are therefore not relevant.

In order to issue the proper process to compel the attendance of an accused person, it is incumbent upon the Court first to determine whether the offence is one that falls under a summons or warrant case. Section 2 of the Criminal Procedure Code provides for the definition of a summons or warrant case. A 'Summons case means a case relating to an offence and not being a warrant case' and a 'Warrant case means a case relating to an offence punishable with death or with imprisonment for a term exceeding six months.'

The offence in this case being punishable by section 27(8) of the Police Act 1967 carries the penalty of a fine not exceeding $500/- or an imprisonment term *not* exceeding six months or both (emphasis is mine). It is clear that this is a summons case and not a warrant case and therefore a summons should in the first instance issue and not a warrant.

Is there then any legal provision to justify the issue of a warrant instead of a summons?

Section 27(6) of the Police Act 1967 empowers any police officer to arrest a person when there are reasonable suspicions that the said person is committing the offence in question. No warrant is required.

The only provision which gives the Court power to issue a warrant instead of a summons is section 47 of the Criminal Procedure Code. Paragraph (a) is relevant to the present case where instead of a summons the Court issues a warrant. However, before the Court exercises this power, it should satisfy itself that there are reasons to believe that the defendant has absconded or that the defendant will not obey the said summons.

From the unrebutted affidavit of the applicant in the present case, it is shown that for a period of over one year *i.e.* from the date of the alleged offence until the date when the warrant was applied for, the applicant was never questioned nor was he apprehended by the Police. He was not aware of any police investigation into the alleged offence. He had therefore no cause to abscond. The application for the warrant merely alleges that an investigation conducted pursuant to a police report revealed that the applicant was involved in the alleged unlawful assembly and that a warrant was required to secure his attendance in Court to answer to the charge. No reasons were given as to why the warrant and not a summons was required. There is no indication that the application had absconded or that he would not obey a summons. Nor were there any reasons given by the learned Magistrate in issuing the warrant. In the event, I am of the opinion, the issue of a warrant is wrong in law and therefore illegal.

It has to be borne in mind that it is the cardinal principle of law that in criminal cases the provisions of the law must strictly be followed. In the present case, ordinarily a Magistrate may only issue a summons. He cannot issue a warrant unless there is good reason for him to do so. In the absence of any good reason, the issue of a warrant would, to my mind, be wrong and illegal. The applicant was therefore illegally arrested.

I would in the circumstances set aside the warrant. The applicant is not bound to attend the Magistrate's Court on November 16, 1985.

Warrant set aside.

Solicitors: *Karpal Singh & Co.*